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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91161817
Party	Defendant Motorola, Inc. Motorola, Inc. 1303 East Algonquin Road Schaumburg, IL 60196
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Submission	Motion for Summary Judgment
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Date	12/15/2005
Attachments	Applicant's Motion for Summary Judgment Exhibit 9 - Exhibit 10 (3 of 4).pdf ( 87 pages )

# EXHIBIT 9

Nextel Communications, Inc., Opposer, v. Motorola, Inc., Applicant  
Opposition No.: 91/161,817  
Application No.: 78/235,618  
Mark: Sensory Mark (911 Hz Tone)

Exhibit 9 in Support of Applicant's Motion for Summary Judgment

CONFIDENTIAL - ATTORNEYS' EYES ONLY

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

NEXTEL COMMUNICATIONS, INC., :

Opposer :

v. : App. No. 78/235,618

MOTOROLA, INC., :

Applicant :

**CONFIDENTIAL**  
**ORIGINAL**

Deposition of ALLISON O'REILLY

Washington, D.C.

Tuesday, July 26, 2005

9:05 a.m.

Job No.: 22-60399

Pages 1 - 65

Reported by: Nancy Bond Rowland

1 Deposition of ALLISON O'REILLY, held at the  
2 offices of:

3

4

Crowell & Moring

5

1001 Pennsylvania Avenue, N.W.

6

Washington, D.C.

7

8

Pursuant to agreement, before Nancy Bond

9

Rowland, Registered Professional Reporter and Notary

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Public in and for the District of Columbia.

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3 MICHAEL H. JACOBS, ESQUIRE

5 CROWELL & MORING

7 Washington, D.C. 20004

9

11 THOMAS M. WILLIAMS, ESQUIRE

13 NBC Tower - Suite 3600

15 Chicago, IL 60611-5599

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22

23

24

25

**CONFIDENTIAL - ATTORNEYS' EYES ONLY**

**Allison O'Reilly July 26, 2005**

4

1 C O N T E N T S

2 EXAMINATION OF ALLISON O'REILLY PAGE

3 By Mr. Williams 5

4

5

6 E X H I B I T S

7 (Attached to the Transcript)

8 DEPOSITION EXHIBIT PAGE

9 1 - Applicant's Notice of Deposition. 16

10 2 - Applicant's First Notice of Deposition. 17

11 3 - Notice of Opposition. 22

12 4 - Opposer's Response to Applicant's First Set 55

13 of Requests for Production of Documents and

14 Things.

15 5 - Letter dated April 29, 2005 and attachments. 56

16 6 - Opposer's Response to Applicant's First Set 56

17 of Interrogatories.

18 7 - Mark - CHRRRP. 60

19

20

21

22

23

24

25

1 P R O C E E D I N G S

2 ALLISON O'REILLY

3 having been duly sworn, testified as follows:

4 EXAMINATION BY COUNSEL FOR APPLICANT

5 BY MR. WILLIAMS:

6 Q Good morning, Miss O'Reilly. I'm Tom  
7 Williams. I'm here on behalf of Motorola.

8 Could you please state your name for the  
9 record?

10 A Allison Scherry O'Reilly.

11 Q Do you have any maiden names or other names  
12 you've gone by over the years?

13 A My maiden name is Scherry.

14 Q Okay. What's your address?

15 A Home?

16 Q Yes.

17 A 1178 Randolph Road, McLean, Virginia 22101.

18 Q And your business address?

19 A 2003 Edmund Halley Drive, Reston, Virginia  
20 20191.

21 Q Have you ever testified at a deposition  
22 before?

23 A I have not.

24 Q Have you ever testified at a trial before?

25 A I have not.

1 Q Is there any reason why you cannot give  
2 truthful and accurate testimony here today?

3 A Absolutely not.

4 Q Do you have a college degree?

5 A Yes.

6 Q From what school?

7 A University of Maryland.

8 Q In what year did you receive that?

9 A 1982.

10 Q What was your major?

11 A Marketing.

12 Q Did you have any minors?

13 A No.

14 Q Do you have any graduate degrees?

15 A I do not.

16 Q Who is your current employer?

17 A Nextel Communications.

18 Q And what is your current job title?

19 A Director - promotions and retail marketing.

20 Q How long have you had that title?

21 A Since last June of 2004.

22 Q What do your job duties entail in that  
23 position?

24 A I am responsible for all offer-driven  
25 advertising. Underneath the people who work for me



1 manage packaging, collateral, point of purchase  
2 materials, promo television, radio.

3 Q Who is your supervisor?

4 A Mary Matthews.

5 Q And what's her title?

6 A Vice-president - mass marketing  
7 communications.

8 Q Does she have the same business address as  
9 you?

10 A Yes.

11 Q Offer-driven advertising you mentioned?

12 A Yes.

13 Q Can you explain that?

14 A Sure. Anything that has a price point in it  
15 as opposed to brand marketing.

16 Q Are you involved in brand marketing at all?

17 A Not per se other than it's within the same  
18 group.

19 Q Who works with brand marketing in your group?

20 A Right now the person has left the company, so  
21 it's Mary Matthews.

22 Q You referred to collateral materials. What  
23 was that?

24 A Brochures, electronic collateral.

25 Q What's an example of electronic collateral?

1 A An e-flier that's posted online that someone  
2 can download and customize with their call to action.

3 Q Where online would that be placed?

4 A We have a site from Nextel that's called  
5 inc and snc, and our indirect dealers can get it or our  
6 sales force can get it. They're customizable, again  
7 downloadable fliers.

8 Q Is there audio and video in those fliers?

9 A No.

10 Q Just video?

11 A No. It's actually just a printout.

12 Q Printed text?

13 A Yes.

14 Q Images?

15 A Yes.

16 Q What did your refer to when you mentioned  
17 point of purchase advertising?

18 A POP in a store environment, the posters and  
19 banners and so forth that are used within a Nextel  
20 retail store or authorized representative.

21 Q And promotional television and radio, is that  
22 simply TV and radio advertising?

23 A Yes. Promotional television is when there's  
24 a call to action. Again, there's a telephone number, a  
25 price point versus brand advertising that is more about

1 the brand itself.

2 Q What would be an example of call to action  
3 advertising?

4 A Call a certain 800 number, visit Nextel.com  
5 or visit a store near you.

6 Q Would that be for say a limited time offer?

7 A Sure. Yes.

8 Q What other types of call to action  
9 advertising would there be?

10 A That's mostly it. They're done monthly,  
11 quarterly, promoting the latest offer available.

12 Q Prior to accepting your position as director  
13 of promotions and retail marketing, did you have any  
14 other previous positions within Nextel?

15 A Absolutely.

16 Q And working backwards from your present  
17 position, what positions have you held?

18 A Prior to becoming director I was senior  
19 manager of advertising, and I was responsible for again  
20 the point of purchase materials in store as well as all  
21 advertising to support the purchase of our Nextel  
22 retail stores and the media plans for that.

23 Q When did you hold that position?

24 A Probably from 19 -- I'm sorry -- 2002 to  
25 2004, maybe 2001 to 2004.

1 Q Prior to senior marketing --

2 A Manager.

3 Q -- manager of advertising, any positions in  
4 Nextel prior to that?

5 A Yes. I was manager of trade shows, and I  
6 also developed collateral packaging, user guides, and I  
7 started with Nextel in December of 1997.

8 Q So you held that position from approximately  
9 '97 to 2000?

10 A I did trade shows and advertising for  
11 probably maybe a year and a half, two years, and then  
12 prior to that I did collateral and packaging when I  
13 joined.

14 Q When did you start with Nextel?

15 A December '97.

16 Q Where were you prior to Nextel?

17 A I worked at a marketing firm in Boston.

18 Q What was the name of that firm?

19 A Irma Mann, M-a-n-n, Strategic Marketing.

20 Q Did you go there from college?

21 A No. I went there after I started my career  
22 at MCI, and then I moved to Boston, and I worked at ITT  
23 Sheraton Hotels for two years. They had a layoff, and  
24 I went to work for an advertising agency which was Irma  
25 Mann Strategic Marketing.

1 Q How long were you with MCI?

2 A ~~Eight~~ <sup>Seven</sup> years, 1982 to 1989.

3 Q What positions did you hold there?

4 A Various marketing, advertising, sales support  
5 roles.

6 Q What did you do to prepare for today's  
7 deposition?

8 MR. JACOBS: I'll caution you, Miss O'Reilly,  
9 not to divulge any communications with counsel, but  
10 otherwise you can answer.

11 A Really just reviewed what I have -- what I'm  
12 aware of from a Nextel perspective.

13 Q Other than the lawyers, who did you speak  
14 with?

15 A I spoke to someone in our competitive  
16 intelligence group.

17 Q And who was that?

18 A Dennis Newton and Milan ~~Detwiler~~ <sup>Detweiler</sup>.

19 Q You spoke with those two individuals?

20 A Yes.

21 Q Anyone else?

22 A No.

23 Q Where is the competitive intelligence group  
24 located?

25 A Same address as me.

1 Q What does the competitive intelligence group  
2 do?

3 A They do a lot of tracking of information and  
4 research.

5 Q What sort of information and research?

6 A Tracking of advertising spent, current  
7 advertising, and marketing initiatives.

8 Q Because it's called competitive intelligence,  
9 I'm assuming it relates to competitors, is that  
10 correct?

11 A Yes.

12 Q Which competitors would that be?

13 A Carriers.

14 Q Can you give me some examples of carriers?

15 A Verizon, T-Mobile, Cingular.

16 Q Any hardware manufacturers?

17 A No.

18 Q Anything involving Motorola?

19 A No.

20 Q Why did you speak with them?

21 A I wanted to reconfirm exactly what they  
22 tracked to confirm that it was just carrier specific.

23 Q Did you exchange any correspondence, any  
24 e-mails with Mr. Newton or Mr. <sup>Detweiler</sup>~~Detweiler~~?

25 A No.

1 Q Telephone conversation?

2 A No.

3 Q In-person?

4 A Yes.

5 Q Did you take any notes?

6 A No.

7 Q How long was that conversation?

8 A 10, 15 minutes.

9 Q Did you review any documents?

10 A No.

11 Q How about backing up in preparing for today's  
12 deposition, did you review any documents?

13 A Just what was presented.

14 Q By your lawyer?

15 A Yes.

16 Q Do you recall what those were?

17 A The deposition document, my document with my  
18 name on it. I don't recall what that's called. And  
19 one other document that, I'm sorry, I don't recall.

20 Q Do you recall if it had a caption from this  
21 case on it?

22 A I believe it did.

23 Q Did you sign a release or any paperwork  
24 relating to a protective order in this case?

25 A I did not.

1 Q Did you review your files in preparing for  
2 today's deposition?

3 A What is my files?

4 Q Any files that you maintain in your office.

5 A I didn't have anything per se to review.

6 Q Did you give any documents to the lawyers?

7 A I did.

8 Q Do you recall what you gave them?

9 A Trade show information.

10 Q Anything else?

11 A And some names of some other people.

12 Q Do you recall those names?

13 A I don't off the top of my head.

14 Q Were they other Nextel employees?

15 A Yes.

16 Q Were they people in your group?

17 A Some, yes.

18 Q What type of trade show information did you  
19 give them?

20 A Trade shows that we attend as a company.

21 Q Were they brochures from the trade shows?

22 A No. They were just a list of trade shows, a  
23 calendar so to speak.

24 Q A calendar prepared by Nextel?

25 A Yes.



1 Q Do you recall which trade shows would have  
2 been listed on that calendar?

3 A It was the entire calendar, so it could have  
4 been transportation shows, any vertical markets that we  
5 support, manufacturing.

6 Q What was the time period for that calendar?

7 A I believe it was the last few years.

8 Q And when did you give that document to your  
9 lawyers?

10 A The spring of this year, March perhaps.

11 Q 2005?

12 A Yes.

13 Q Are you aware of Nextel's deposition of Mr.  
14 Klein for Motorola that occurred last week?

15 A I'm aware one occurred.

16 Q Who informed you of that?

17 A My lawyer.

18 Q Did you discuss it with anyone else?

19 A Absolutely not.

20 Q Did you read a copy of the transcript of that  
21 deposition?

22 A I did not.

23 Q Did you read any excerpts from that  
24 deposition?

25 A Nothing.

1 Q Any summaries?

2 A Nothing.

3 Q Did you exchange any e-mails or  
4 correspondence with the lawyers about that deposition?

5 A Nothing.

6 Q Did you watch a video of it?

7 A No.

8 MR. WILLIAMS: I'm going to mark this as the  
9 first exhibit.

10 (Deposition Exhibit 1 was marked for  
11 identification and was attached to the transcript.)

12 BY MR. WILLIAMS:

13 Q This is Applicant's Notice of Deposition of  
14 Miss Allison O'Reilly. Have you seen this document  
15 before?

16 A I believe I saw this yesterday.

17 Q This has been marked as Exhibit 1. Did you  
18 discuss it with anyone?

19 A No.

20 Q Did you discuss it with the lawyers?

21 A It wasn't really discussed. It was just  
22 presented, and I reviewed it.

23 Q By fax or e-mail?

24 A Face-to-face.

25 MR. WILLIAMS: I'm going to mark the second

1 exhibit. This will be Exhibit Number 2.

2 (Deposition Exhibit 2 was marked for  
3 identification and was attached to the transcript.)

4 BY MR. WILLIAMS:

5 Q This is Applicant's First Notice of  
6 Deposition of Opposer Pursuant to Federal Rule of Civil  
7 Procedure 30(b)(6). Have you seen this document  
8 before?

9 A I believe this is the document that I saw,  
10 yes.

11 Q When did you first see this?

12 A Sometime probably in March of 2005.

13 Q At the bottom of the first page you'll see a  
14 caption Deposition Categories. Do you see that?

15 A Yes.

16 Q Could you briefly review the paragraphs  
17 numbered 1 through 21.

18 A Yes.

19 Q Have you been designated to testify in  
20 Nextel's behalf with respect to each of these  
21 paragraphs?

22 A Yes.

23 Q Have you discussed these categories with  
24 anyone?

25 A No, other than the lawyers.

1 Q When did you have those discussions?

2 A Again, starting in March of 2005.

3 Q Did you do any research to prepare to testify  
4 in these categories?

5 A Again, I spoke to the competitive  
6 intelligence team, but other than that, just knowledge  
7 that I'm aware of.

8 Q Did you specifically refer to any documents  
9 in response to these 21 paragraphs?

10 A No.

11 Q You had conversations with the competitive  
12 intelligence people and the lawyers?

13 A Yes. If I had a question or something that I  
14 was not the expert at, I did reach out, but again did  
15 not share why I was looking for that information.

16 Q Who did you reach out to?

17 A The trade show team to gather the trade show  
18 information.

19 Q Anyone else?

20 A I don't believe so.

21 Q How about sales and advertising numbers, did  
22 you reach out to anyone to discuss those topics?

23 A Well, sales are not within my team. Yes, I  
24 did. I reached out to someone in finance, Janine  
25 Rubitski.

1 Q Did you have any correspondence with Janine?

2 A No correspondence other than a verbal request  
3 for it.

4 Q Did she give you any documents in response to  
5 that request?

6 A She sent an e-mail, yes.

7 Q What was contained in that e-mail?

8 A Units sold and revenue for the past three or  
9 four years.

10 Q When you say units sold --

11 A Handsets.

12 Q Handsets. Do you recall which models?

13 A It was all models and then a separate  
14 category for BlackBerry.

15 Q You said you spoke with someone on the trade  
16 show team, is that correct?

17 A It was just a verbal request asking for the  
18 trade shows, trade show schedule.

19 Q Who was that?

20 A I believe it was Andy <sup>Birkenstock</sup>~~Berkenstock~~. He's one  
21 of the people on the trade show team.

22 Q Anyone else?

23 A No. I did speak with the agency to gather  
24 spending on advertising per se.

25 Q What agency would that be?

1 A It was MindShare.

2 Q Did they give you any documents?

3 A They did.

4 Q What did those documents contain?

5 A Media spend by year.

6 Q Media spend for what products?

7 A Oh, again it's just Nextel in general. We  
8 don't categorize by product.

9 Q Does Nextel use any other advertising  
10 agencies other than MindShare?

11 A MindShare is our media agency. We have  
12 Chiat/Day which is our creative agency.

13 Q Did you speak with anyone from that agency?

14 A I did not.

15 Q Can you think of anyone else you would have  
16 spoke to or reached out to other than the sales and  
17 finance people, the trade show team, and the MindShare  
18 people?

19 A I may have reached out to the public sector  
20 team to understand their attendance at any shows which  
21 may not have been captured under trade shows.

22 Q Did you speak with the public sector team  
23 about anything other than trade shows?

24 A I did not.

25 Q Who did you speak to at the public sector

1 team?

2 A I believe it was Diana Bibb.

3 Q Is she at the same address?

4 A She is.

5 Q Did she give you any correspondence, any  
6 printed materials?

7 A A list of shows that we attend, that she  
8 attends.

9 Q Do you recall how far back that list  
10 stretched?

11 A I believe it was for the last two years.

12 Q Did you speak with her about anything other  
13 than the trade shows?

14 A I did not.

15 Q Did you ask her whether Motorola was at these  
16 trade shows?

17 A I did not.

18 Q Did you discuss Motorola with her at all?

19 A I did not.

20 Q When did you have that conversation with Miss  
21 Bibb?

22 A Most likely it was in the March time frame as  
23 well.

24 Q Is she still with the company to your  
25 knowledge?

1 A Yes.

2 MR. WILLIAMS: I'm going to mark another  
3 exhibit. This will be Exhibit 3.

4 (Deposition Exhibit 3 was marked for  
5 identification and was attached to the transcript.)

6 BY MR. WILLIAMS:

7 Q This is the Notice of Opposition. Have you  
8 seen this document before?

9 A I believe I have, yes.

10 Q When did you see this?

11 A Today.

12 Q Did you discuss it with anyone other than the  
13 lawyers?

14 A I did not.

15 Q Let me draw your attention to paragraph 1.  
16 Could you read that to yourself, and let me know when  
17 you're done.

18 A Yes.

19 Q What is meant by dispatch communications  
20 services?

21 A It's referred to as a two-way radio.

22 Q Now, what services would Nextel provide in  
23 relation to a two-way radio?

24 A Nextel Direct Connect walkie-talkie service.

25 Q What is that?



1 A It's the walkie-talkie that's built into  
2 every phone.

3 Q How does Nextel provide those services?

4 A It's built into every phone, and it's our key  
5 differentiator.

6 Q What do you mean by key differentiator?

7 A It's what makes Nextel different from other  
8 carriers and why most people choose Nextel.

9 Q Where are those products purchased?

10 A Through a variety of channels: direct sales,  
11 stores, web, telesales, authorized representatives,  
12 dealers.

13 Q How many Nextel products would carry the  
14 Direct Connect walkie-talkie service currently?

15 A Every handset that we sell, including the  
16 BlackBerry by <sup>RIM</sup> ~~REM~~.

17 Q Can you ballpark how many different products  
18 that would be?

19 A It varies by year and how many we launch. I  
20 believe now we may have 12 or 14 handsets out, but  
21 again it fluctuates based on when phones are launched.

22 Q So if a consumer purchases one of these  
23 Nextel Direct Connect walkie-talkie products, are they  
24 automatically hooked up with the network at the time of  
25 purchase?

1           A   Well, it's also a cellular phone with a  
2 walkie-talkie built in and, yes, the phone comes with  
3 it. If they so choose a plan with a walkie-talkie,  
4 which most do, most of our plans have the service in  
5 there, they use the walkie-talkie service.

6           Q   In paragraph 1 referring to Nextel, it says  
7 currently has over 12 million subscribers to its  
8 services nationwide. Of that 12 million how many would  
9 relate to the dispatch communications as opposed to the  
10 cellular telephone customers?

11          A   Well, there are now 17 million. I really  
12 can't say. I would say that almost all of our  
13 subscribers use the walkie-talkie service as well as  
14 cellular.

15          Q   So when you say the walkie-talkie service,  
16 would that refer to the dispatch communication service?

17          A   Yes, but they also use cellular.

18          Q   Can you use dispatch communication services  
19 without using cellular services?

20          A   You can select a plan that turns off  
21 cellular, yes, but most customers don't, but there  
22 could be certain businesses that only want their  
23 customers or their employees, so to speak, to use  
24 dispatch with a two-way radio.

25          Q   Can you think of any examples of businesses

1 that have chosen that option?

2 A It could be landscapers whose employers only  
3 want them to use the dispatch and not cellular to drive  
4 up the phone bills. It could be public sector. I  
5 really don't know. I'm not familiar.

6 Q I draw your attention to paragraph 2, if you  
7 would please read that to yourself and let me know when  
8 you're finished..

9 A Okay.

10 Q Does Motorola manufacture products for use  
11 with Nextel's dispatch services?

12 A Yes.

13 Q Which products?

14 A Again, all handsets.

15 Q Do any other manufacturers manufacture these  
16 handsets?

17 A No. There's a BlackBerry that has the  
18 two-way radio in it as well, and that's manufactured by

19 ~~REM.~~ RIM

20 Q Anyone other than Motorola or ~~REM~~? RIM

21 A Not for Nextel, no.

22 Q Who purchases these types of products?

23 A Can you clarify? From a customer's  
24 standpoint?

25 Q Yes.

1 A Anyone. It could be individuals, businesses,  
2 Fortune 500 companies. A variety of companies use  
3 Nextel.

4 Q And those same entities would also be the end  
5 users?

6 A Sure.

7 Q How long is the longstanding relationship  
8 referred to in paragraph 2?

9 A Well, I've been at Nextel since 1997, so it  
10 goes back I would say at least nine years ~~prior to me~~,  
11 but again I can't answer that with an exact date.

12 Q Please read paragraph 3 to yourself, and let  
13 me know when you've finished.

14 A Okay.

15 Q Who are the direct competitors referred to in  
16 paragraph 3?

17 A My assumption is they make phones for  
18 Verizon. They make some phones for Sprint and most  
19 likely other carriers. Those are the two that I know.

20 Q Verizon and Sprint would be considered  
21 competitors of Nextel?

22 A Yes.

23 Q Will you please read paragraph 4, and let me  
24 know when you've finished.

25 A Okay.

1 Q Do you understand what's meant by the 911  
2 tone application?

3 A I understand it's a tone, yes.

4 Q Do you understand it to be a tone claimed by  
5 Motorola to be a trademark in its filings with the  
6 Patent and Trademark Office?

7 A Yes.

8 Q Do you understand that Nextel has opposed  
9 that trademark application?

10 A Yes.

11 Q Now, the goods identified in that application  
12 referred to as two-way radios, what do you understand  
13 two-way radios to be?

14 A Two-way radios could be a true two-way radio  
15 or two-way radios could be a two-way radio that's built  
16 into every Nextel handset that we sell.

17 Q What do you mean when you say a true two-way  
18 radio?

19 A Two-way radio without cellular.

20 Q Does Nextel offer a true two-way radio?

21 A Not that I'm aware, no.

22 Q Are you aware of any Motorola true two-way  
23 radios?

24 A I'm aware Motorola has two-way radios, yes.

25 Q Do all Nextel cellular telephones have the

1 Direct Connect walkie-talkie service feature?

2 A Yes.

3 Q Have you heard the 911 tone that's referred  
4 to in that trademark application?

5 A I have not.

6 Q Do you understand what that tone is?

7 A I understand it's a tone, but I've never  
8 heard it, so I don't know.

9 Q Have you seen a Motorola two-way radio?

10 A Perhaps when I was down at Plantation, but  
11 not really a focus.

12 Q Have you seen one in operation?

13 A Perhaps I have just in general, but not one  
14 that was demonstrated per se directly to me.

15 Q So you've never heard the tone --

16 A No.

17 Q -- that emanates from that phone?

18 A No.

19 MR. JACOBS: You're referring to the two-way  
20 Motorola radios?

21 MR. WILLIAMS: Correct.

22 MR. JACOBS: Okay.

23 A No.

24 Q Does the Nextel Direct Connect walkie-talkie  
25 service emit any tones?

1 A Yes, it does.

2 Q How would you describe those tones?

3 A The Nextel chirp.

4 Q Do you have any other description of the  
5 Nextel chirp?

6 A No.

7 Q Do you know technically in terms of frequency  
8 what level that chirp is produced?

9 A I believe it's an 1800, but other than that  
10 we refer to it as the Nextel chirp. It's what you hear  
11 when you initiate a Direct Connect call.

12 Q How do you initiate a Direct Connect call?

13 A You hit the Alert button, a number is  
14 programmed in, you press the <sup>Button</sup>~~Alert~~, and it chirps.

15 Q Does the Nextel product make any other noises  
16 other than that 1800 chirp?

17 A It makes sounds if a call doesn't go through.  
18 It makes probably sounds when you punch in the buttons.

19 Q Any other sounds you can think of?

20 A Not specifically.

21 Q Going back to the Motorola 911 tone, have you  
22 discussed that tone with any customers or potential  
23 customers?

24 A Absolutely not.

25 Q Have you discussed that tone with anyone at

1 Motorola -- excuse me -- at Nextel?

2 A No.

3 Q Are you aware of anyone at Nextel discussing  
4 Motorola's 911 tone with any customers or potential  
5 customers?

6 A No, but I wouldn't be aware of other groups,  
7 but no one related to me.

8 Q What other groups could that possibly  
9 include?

10 A The only team I could think of was product,  
11 but again they are more focused on new products and not  
12 old products, but again doubtful.

13 Q Any other groups other than product?

14 A No.

15 Q Who is the head of the product group?

16 A ~~Blair~~ Blaire Kutrow.

17 Q Do you know how to spell that last name?

18 A K-u-t-r-o-w.

19 Q Moving down to paragraph number 5, will you  
20 please read that to yourself, and let me know when  
21 you're finished.

22 A Okay.

23 Q Do you have any reason to doubt that that  
24 claimed first use date is accurate?

25 MR. JACOBS: I'm going to object to the



1 extent this question calls for a legal conclusion.

2 A I'm not aware of anything or have we seen  
3 anything noting use.

4 Q Are you aware of anyone at Nextel who has  
5 looked into that question?

6 A No.

7 Q Moving on to paragraph number 6, will you  
8 read that and let me know when you're finished.

9 A Okay.

10 Q Have you had occasion to read that office  
11 action?

12 A No.

13 Q Paragraph 7 refers to a response to that  
14 office action. Have you had a chance to read that  
15 response to the office action?

16 A No.

17 Q Will you please read paragraph 9, and let me  
18 know when you're finished.

19 MR. JACOBS: 9 you said?

20 MR. WILLIAMS: Yes.

21 A Okay.

22 Q Paragraph 9 states in part "Applicant has not  
23 used the 911 Hz tone in commerce in connection with the  
24 goods listed in the 911 Hz tone application." What is  
25 the factual basis for that statement?

1 MR. JACOBS: Object to the extent it calls  
2 for a legal conclusion, but you can answer.

3 A We've not seen or been made aware of any in  
4 commerce, again I'm following the language here, use in  
5 any marketing or advertising.

6 Q Has Nextel researched that?

7 A Not per se.

8 Q Has Nextel done any market studies on that  
9 topic?

10 A No other than attendance at trade shows or  
11 seen anything that would have been brought to the  
12 attention of the marketing communications group.

13 Q Has Nextel done any focus groups?

14 A No.

15 Q Any customer interviews?

16 MR. JACOBS: This is with respect to the  
17 tone, the 911 hertz tone?

18 MR. WILLIAMS: Correct.

19 A No.

20 Q Any survey work with respect to the 911 tone?

21 A No.

22 Q Have any experts been consulted with respect  
23 to the 911 survey tone?

24 MR. JACOBS: Objection to the extent it calls  
25 for attorney-client or work product communications, but

1 you can answer.

2 A Not that I'm aware, no.

3 Q Are you aware of any documents that relate to  
4 the claim made that applicant has not used the 911 tone  
5 in commerce?

6 A No.

7 Q Any correspondence that you're aware of on  
8 that topic?

9 A No.

10 Q Any e-mails?

11 A No.

12 Q Who would be the person at Nextel that would  
13 have knowledge regarding the trade shows where that 911  
14 tone may have been heard?

15 A Depending upon the market, the vertical  
16 market, if it was public sector, the public sector  
17 team. If it was transportation, the people that are  
18 responsible for transportation. It would vary by the  
19 show type and the product experts there.

20 Q Will you please read paragraph 10, and let me  
21 know when you're finished.

22 A Okay.

23 Q That paragraph states in part "The 911 Hz  
24 tone is not inherently distinctive." What's the  
25 factual basis for that statement?

1 MR. JACOBS: Objection to the extent it calls  
2 for a legal conclusion.

3 A Can you repeat the question?

4 Q What's the factual basis for the statement  
5 that the 911 Hz tone is not inherently distinctive?

6 A We don't know the difference.

7 Q We don't know the difference between what and  
8 what?

9 A I don't know the difference -- I don't know  
10 the sound of that tone.

11 Q What did you mean when you said the  
12 difference?

13 A Between a Nextel chirp and this 911 tone.

14 Q Are you aware of any research done by Nextel  
15 on that question?

16 A No.

17 Q Are you aware of any market studies to  
18 support that claim that the tone is not inherently  
19 distinctive?

20 MR. JACOBS: Objection to the extent it calls  
21 for a legal conclusion.

22 A No.

23 Q Are you aware of any focus groups that have  
24 been conducted on that question?

25 MR. JACOBS: Same objection.

1 A No.

2 Q Are you aware of any customer interviews that  
3 have occurred based on that question?

4 MR. JACOBS: Same objection.

5 A No.

6 Q Are you aware of any consumer survey work  
7 that's been done on that question?

8 MR. JACOBS: Same objection.

9 A No.

10 Q Has Nextel obtained any expert opinions on  
11 that question?

12 MR. JACOBS: Objection to the extent it calls  
13 for a legal conclusion and for work product  
14 information.

15 A No.

16 Q Further in paragraph 10 it states "The 911 Hz  
17 tone is not inherently distinctive and has not acquired  
18 distinctiveness." What is the factual basis for the  
19 statement that the 911 Hz tone has not acquired  
20 distinctiveness?

21 MR. JACOBS: Objection to the extent it calls  
22 for a legal conclusion.

23 A Again, I don't know the difference.

24 Q The difference between?

25 MR. JACOBS: Do you understand the question?

1 A No. I'm sorry. Can you clarify please?

2 Q In paragraph 10 it states that the tone,  
3 referring to the Motorola tone, has not acquired  
4 distinctiveness. I'm asking what the basis for  
5 Nextel's belief for that statement would be.

6 MR. JACOBS: Objection to the extent it calls  
7 for a legal conclusion.

8 A I guess we don't know it's inherently  
9 distinctive.

10 Q The second part to that statement refers to  
11 acquired distinctiveness. Do you know if it has  
12 acquired distinctiveness?

13 MR. JACOBS: Same objection.

14 A Not that I'm aware.

15 Q Has Nextel done any market studies on that  
16 question?

17 MR. JACOBS: Same objection.

18 A Not that I'm aware.

19 Q Has Nextel conducted any focus groups on that  
20 question?

21 MR. JACOBS: Same objection.

22 A Not that I'm aware.

23 Q Has Nextel conducted any customer interviews  
24 on that question?

25 MR. JACOBS: Same objection.

1 A Not that I'm aware.

2 Q Has any survey work been done on that  
3 question?

4 MR. JACOBS: Same objection.

5 A Not that I'm aware.

6 Q Has Nextel consulted with any experts on that  
7 question?

8 MR. JACOBS: Same objection and also an  
9 objection based on work product.

10 A Not that I'm aware.

11 Q Are you aware of any Nextel documents  
12 relating to that question?

13 MR. JACOBS: Objection to the extent it calls  
14 for a legal conclusion and may call for privileged  
15 documents.

16 A Not that I'm aware.

17 Q Moving on to paragraph 11, will you please  
18 read that and let me know when you're done.

19 A Okay.

20 Q Paragraph 11 states that Nextel is a  
21 purchaser and potential purchaser of communications  
22 devices incorporating two-way radio capabilities from  
23 applicant and other vendors. What would those  
24 communications devices be?

25 A Handsets and/or BlackBerry.

1 Q But the BlackBerry comes from ~~REM~~<sup>RIM</sup>, correct?

2 A Correct.

3 Q Who are the other vendors referred to in  
4 paragraph 11?

5 A I can only say the other vendor being ~~REM~~<sup>RIM</sup>.

6 Q And again, that's the BlackBerry model?

7 A Correct.

8 Q Who are Nextel's three largest customers for  
9 the communications devices referred to in paragraph 11?

10 A I'm sorry, who are our biggest customers?

11 Q Yes.

12 A That we sell handsets to?

13 Q Yes.

14 A I don't know. I'm not in sales. I don't  
15 have that information.

16 Q Who would have that information?

17 A Most likely VP of sales.

18 Q And who is that?

19 A Mark Angelino.

20 Q Paragraph 11 states that Nextel will be  
21 "damaged by the unjustified registration of applicant  
22 of the 911 Hz tone." Do you see that?

23 A Yes.

24 Q What's the factual basis for the claim that  
25 Nextel will be damaged?



1 MR. JACOBS: Objection to the extent it calls  
2 for a legal conclusion. Go ahead.

3 A Nextel uses tones to promote its features and  
4 services, and if Motorola gets the exclusive rights  
5 without showing that they've really used it, then it  
6 prevents Nextel from being able to use those tones in  
7 the future if they so wish.

8 Q When you said that Motorola hasn't used it,  
9 what do you mean by that?

10 A Well, again, we haven't seen usage in  
11 advertising or marketing initiatives promoting the  
12 tone.

13 Q Has Nextel looked for such usage?

14 A Not per se other than what people in certain  
15 departments would have shared with us of any  
16 information.

17 Q I believe you said that Nextel uses tones to  
18 promote its features and services, is that correct?

19 A Yes.

20 Q Which tones would those be?

21 A The Nextel chirp.

22 Q And that was the 1800 chirp you referred to?

23 A Yes.

24 Q And how does Nextel use those tones to  
25 promote its features and services?

1 A With an audible promotional television, brand  
2 television, radio. It's actually part of our tag line  
3 which is shown without the phone itself because it's a  
4 differentiator for us.

5 Q How long has Nextel been doing that?

6 A Since 1997. I'm sorry. 1997, yes.

7 Q The Nextel devices that emit that tone are  
8 manufactured by Motorola, is that correct?

9 A Correct.

10 Q And by <sup>RIM</sup> ~~REM~~?

11 A Yes.

12 Q The BlackBerry device also makes the 1800  
13 tone?

14 A I believe so. It's the same chirp sound.

15 Q Has Nextel conducted any market studies in  
16 connection with its chirp tone?

17 A Not on the chirp per se.

18 Q Has Nextel conducted any focus groups or  
19 consumer interviews relating to the chirp tone?

20 A No.

21 Q Any survey work that you're aware of?

22 A No, not that I'm aware.

23 Q So Nextel promotes its chirp tone through  
24 radio and television advertising?

25 A Brand and promotional television, yes.

1 Q What's the difference between brand and  
2 promotional television?

3 A Again, one has an offer, and one is more  
4 about the Nextel brand in general.

5 MR. WILLIAMS: Let's take a short break.

6 (Recess)

7 BY MR. WILLIAMS:

8 Q Can I draw your attention back to Exhibit 2  
9 please. This is the Notice of Deposition pursuant to  
10 Rule 30(b)(6). Will you please read paragraph 1 to  
11 yourself, and let me know when you're done.

12 A Yes.

13 Q Which facts does opposer base its contention  
14 that Motorola has not used the 911 tone in commerce in  
15 connection with its two-way radios?

16 MR. JACOBS: Objection to the extent it calls  
17 for a legal conclusion.

18 A We would have been in my role within Nextel  
19 and supporting a variety of marketing efforts, had  
20 Motorola been advertising and marketing the tone or the  
21 mark, we would have been made aware from the various  
22 groups, for example, the public sector group.

23 Q If you had to prove today that that tone  
24 wasn't used as a mark, what facts would you rely on?

25 MR. JACOBS: Objection to the extent it calls

1 for a legal conclusion.

2 A Other than it hasn't been brought to my  
3 attention, I haven't seen it in my almost eight years  
4 at Nextel.

5 Q So there's no particular piece of affirmative  
6 evidence that you would rely on?

7 MR. JACOBS: Same objection.

8 A Not that I've been made aware.

9 Q Can you please read number 2, and let me know  
10 when you're done.

11 A Okay.

12 Q Which facts does Nextel base its contention  
13 that Motorola's 911 tone is not inherently distinctive?

14 MR. JACOBS: Same objection.

15 A Can you please clarify?

16 Q Nextel claims that the Motorola 911 tone is  
17 not inherently distinctive. What's the factual basis  
18 for that claim?

19 MR. JACOBS: Same objection.

20 A Again, I'm not familiar with the 911 tone.

21 Q If you had to prove today that that tone was  
22 not inherently distinctive, "you" being Nextel, what  
23 would you rely on?

24 MR. JACOBS: Same objection.

25 A I'm sorry. One more time. If I had to --

1 Q If Nextel had to prove that Motorola's 911  
2 tone was not inherently distinctive, what evidence  
3 would you rely on to support that claim?

4 MR. JACOBS: Same objection.

5 A Again, I don't think I would say listening to  
6 the sound and do people know it's distinctive from a  
7 marketing perspective and reinforcing it.

8 Q Does Nextel have any evidence as to whether  
9 people know it's distinctive?

10 MR. JACOBS: Know what is distinctive?

11 MR. WILLIAMS: The Motorola tone.

12 A I don't believe so.

13 Q Will you please read paragraph number 3, and  
14 let me know when you're done.

15 A Okay.

16 Q Which facts does Nextel base its contention  
17 that Motorola's 911 tone has not acquired  
18 distinctiveness?

19 MR. JACOBS: Objection to the extent it calls  
20 for a legal conclusion.

21 A Again, it's the usage of promoting it so that  
22 people come to learn and understand that tone is  
23 connected.

24 Q And has Nextel studied whether people have  
25 come to learn that that tone is connected to Motorola?

1 A Not that I'm aware.

2 Q Moving on to number 4, will you read that and  
3 let me know when you're finished.

4 A Yes.

5 Q On which facts does Nextel base its  
6 contention that it will be damaged if Motorola's 911  
7 tone is registered?

8 A Again, Nextel uses tones to promote its  
9 features and services, and if Motorola were to get  
10 exclusive rights to this sound, it would prohibit us to  
11 use this sound in the future should we so wish.

12 Q Does Nextel believe those tones are similar,  
13 the Motorola tone and the Nextel chirp?

14 MR. JACOBS: Objection to the extent it calls  
15 for a legal conclusion.

16 A I believe it's the sound in general without  
17 showing usage.

18 Q Well, you're not saying that all sounds sound  
19 similar, are you?

20 A No.

21 Q What is it about this Motorola sound that  
22 troubles you, "you" being Nextel?

23 A I think it's just a sound in general. If  
24 exclusive rights were given to this sound, it would  
25 prohibit us perhaps from using it in the future.

1 Q When you say using it in the future, what are  
2 you referring to?

3 A Well, for example, we use a sound today. We  
4 use a few sounds, mostly the Nextel chirp.

5 Q What other sounds are you referring to other  
6 than the chirp?

7 A There could be a sound in GPS, but the sound  
8 we use most is the Nextel chirp.

9 Q Are there other sounds on the drawing board  
10 to your knowledge?

11 A No.

12 Q Moving on to paragraph 5, will you read that  
13 and let me know when you're finished.

14 A Okay.

15 Q Who do you understand to be the purchasers of  
16 Motorola's products that emit the 911 tone?

17 A I believe it would be the public sector,  
18 police, fire departments.

19 Q How do you know that?

20 A Because you see those people using them.

21 Q Did you talk to anyone about that?

22 A No.

23 Q Are there any Nextel documents that you're  
24 aware of relating to Motorola purchasers for the  
25 two-way radio products?

1 A Not that I'm aware.

2 Q Moving on to paragraph 6, will you read that  
3 paragraph to yourself, and let me know when you're  
4 finished.

5 A Okay.

6 Q Are you aware of any opinion of counsel  
7 relating to Motorola's 911 tone?

8 MR. JACOBS: I'll instruct you not to divulge  
9 any privileged communications.

10 A I'm sorry. I'm not clear of the question.

11 Q Without telling me what it says if it exists,  
12 are you aware of any opinions or memorandums written by  
13 the lawyers relating to Motorola's 911 tone?

14 A No.

15 Q Are you aware of any opinion from any other  
16 expert relating to Motorola's 911 tone?

17 A No.

18 Q Are you aware of any opinion or any comments  
19 from anyone relating to Motorola's 911 tone?

20 A No.

21 Q Will you please read number 7, and let me  
22 know when you're done.

23 A Okay.

24 Q If I understand your previous testimony, you  
25 said that Nextel doesn't make two-way radios, correct?



1 A Correct.

2 Q But the Nextel handsets have that Direct  
3 Connect feature?

4 A Yes. We purchase phones from Motorola that  
5 include a two-way radio.

6 Q Would you call those products a two-way  
7 radio?

8 A No.

9 Q Would you call it a handset?

10 A We call it a handset or a phone that happens  
11 to have other capabilities.

12 Q Does Nextel market their handsets to the  
13 public sector?

14 A Yes.

15 Q How does it do that?

16 A Again, I'm not in sales, but trade shows. We  
17 run ads in magazines, but again I'm not in sales.

18 Q Do you know any particular magazines?

19 A I don't.

20 Q Any particular trade shows?

21 A I don't per se, no.

22 Q Does Nextel have in-house representatives who  
23 would speak with public sector customers?

24 A Salespeople.

25 Q And would they go directly to a public sector

1 purchaser and do a presentation?

2           A     Most likely, yes.

3           Q     What department are those salespeople in?

4           A     They're under most likely the government  
5 sales.

6           Q     Who's the head of that department?

7           A     Leon Frasier. He's the VP.

8           Q     Is he at the same address as you, business  
9 address?

10          A     He might be at 2001 Edmund Halley or he might  
11 be at the McLean office, I don't know, but he's in the  
12 Washington, D.C. area.

13          Q     Okay. Moving on to paragraph 8, will you  
14 please read that and let me know when you're finished.

15          A     Okay.

16          Q     When did Nextel first become aware of  
17 Motorola's 911 tone?

18               MR. JACOBS: Mr. Williams, we'll stipulate  
19 here that Nextel first learned of the application  
20 number that's referred to in topic number 8 from  
21 counsel in March of 2004, and I'll ask Miss O'Reilly  
22 not to divulge any communications with counsel  
23 regarding those issues.

24 BY MR. WILLIAMS:

25          Q     Other than the communications with counsel,

1    when did Nextel first become aware of the tone itself,  
2    the Motorola 911 tone?

3            A    I didn't become aware until speaking with  
4    counsel.

5            Q    Apart from yourself as an individual, do you  
6    know when Nextel as a company became aware of that  
7    tone?

8            A    I do not.

9            Q    Moving on to paragraph 9, will you read that  
10   and let me know when you're finished.

11           A    Okay.

12           Q    Do you think that it's likely that consumers  
13   would be confused as to the source of a two-way radio  
14   or cellular product based on the chirp sound that it  
15   emits?

16           MR. JACOBS:    Objection to the extent it calls  
17   for a legal conclusion and also objection to the use of  
18   the word chirp.    Are you referring to the 911 hertz  
19   tone?

20           MR. WILLIAMS:    Any tone.

21           A    I'm not aware.

22           Q    Do you think it's likely that that would  
23   occur?

24           MR. JACOBS:    Same objection.

25           A    Again, I don't know what the 911 sounds like,

1 so I don't know.

2 Q Is it likely that a consumer would hear a  
3 particular tone emanating from a phone or a two-way  
4 radio product and associate the phone with a particular  
5 source?

6 MR. JACOBS: Same objection.

7 A It's possible, but I don't know.

8 Q What makes you say that it's possible?

9 MR. JACOBS: Same objection.

10 A Again, I have not heard the tone, so I don't  
11 know.

12 Q You've heard the Nextel chirp, correct?

13 A Yes.

14 Q Is it likely that consumers would hear that  
15 chirp and associate that tone with a particular  
16 manufacturer or service provider?

17 A Are we referring to a two-way radio or  
18 referring to a phone?

19 Q Either one.

20 A If it's used in advertising and marketing and  
21 people come to understand its association, it's  
22 possible. Similar to the chirp within the phones that  
23 Nextel sells and how it is referred to as the Nextel  
24 chirp.

25 Q When people hear the Nextel chirp, do they

1 associate that tone with Nextel?

2 A Yes.

3 Q And how do you know that?

4 A Focus groups, people talking.

5 Q Have such focus groups been conducted?

6 A Not per se on that, but focus groups where  
7 Nextel customers are there, that is how they refer to  
8 them.

9 Q Who would have knowledge about those focus  
10 groups and what's gone on?

11 A Dennis Newton.

12 Q And who is Dennis Newton?

13 A He is in charge of research.

14 Q You also mentioned people talking as a source  
15 of that information. What were you referring to when  
16 you said people talking?

17 A Just when you meet other people who have  
18 Nextel, their familiarity with the product. It is  
19 referred to as the Nextel chirp just in casual  
20 conversation in how people refer to their phone.

21 Q Are you aware of any competitor's products  
22 that make a similar chirp noise?

23 MR. JACOBS: Objection to the extent it calls  
24 for a legal conclusion.

25 A Verizon has come out with a handset, but I

1 have not heard their two-way radio sound.

2 Q How about their handset, Verizon's handset,  
3 does that make a chirp?

4 A It makes a sound because it has a  
5 walkie-talkie, but I'm not familiar with that sound.

6 Q Are your competitive intelligence people  
7 looking at that?

8 A I'm sure they are.

9 Q But you haven't heard that sound?

10 A I have not.

11 Q Anyone other than Verizon?

12 A Sprint has a product, and it may make a  
13 sound. I don't know. It has a walkie-talkie feature  
14 in it, but I don't know that sound either.

15 Q Are you aware of any consumer who's been  
16 confused as to the source of a product because of the  
17 sound that it makes?

18 MR. JACOBS: Objection to the extent it calls  
19 for a legal conclusion.

20 A Not that I'm aware of.

21 Q What's Nextel's annual advertising budget?

22 A In the hundreds of millions, \$150 million  
23 perhaps.

24 Q Do you know how that's allocated out  
25 approximately?

1 A What do you mean by allocation?

2 Q A certain amount to trade shows, a certain  
3 amount to radio, a certain amount to television, for  
4 example.

5 A It varies by year. Trade shows are separate.  
6 Media is one group.

7 Q But that would all include the \$150 million?

8 A Yes. Again, I'd have to get accurate  
9 numbers.

10 Q Of that \$150 million, what percentage of that  
11 would be allocated to advertising where the Nextel  
12 chirp would be audible?

13 A Again, I'd have to go back and get accurate  
14 information, but that would include promo television,  
15 brand, and radio which is audible.

16 Q In the Nextel advertising where the 1800  
17 chirp tone is audible, are there any other tones that  
18 are audible?

19 MR. JACOBS: Are you referring to a specific  
20 commercial?

21 MR. WILLIAMS: Any form of advertising that  
22 Nextel uses.

23 A Most of it is focused on the Nextel chirp.  
24 Other products and features might be advertised, but  
25 they perhaps don't come with a sound.

1 Q I think you said that the handsets may make a  
2 tone when buttons are pressed, for example.

3 A Yes.

4 Q Is there any Nextel advertising where those  
5 tones are heard?

6 A Not that I can recall because we don't show a  
7 cellular call being made. We focus on our  
8 differentiators which would be the walkie-talkie.

9 Q Do any of your competitors offer a  
10 walkie-talkie?

11 A Yes.

12 Q Who?

13 A Verizon has a walkie-talkie, and Sprint has I  
14 believe one handset with a walkie-talkie.

15 Q Do you know how many different Nextel  
16 advertisements have played the Nextel chirp?

17 MR. JACOBS: Mr. Williams, I think we're  
18 starting to get off topic here from the 30(b)(6)  
19 notice. I'll let Miss O'Reilly answer a couple more  
20 questions here, but I think we should probably get back  
21 on topic.

22 A I'd have to gather the information. It would  
23 go all the way back to 1997.

24 Q Would you look at paragraph 20, and let me  
25 know when you've read that.



1 A Okay.

2 Q Does Nextel have a document retention policy?

3 A Not that I'm aware.

4 Q Are there any instructions as to how long you  
5 can keep your e-mail?

6 A Not that I'm aware.

7 Q Are you aware of your In boxes being purged  
8 at periodic intervals?

9 A Not that I'm aware.

10 Q Is Nextel aware of any other companies other  
11 than Motorola who use a 911 hertz tone?

12 A Again, not that I'm aware.

13 MR. WILLIAMS: Let's move on to another  
14 exhibit.

15 (Deposition Exhibit 4 was marked for  
16 identification and was attached to the transcript.)

17 BY MR. WILLIAMS:

18 Q We've marked as Exhibit 4 Opposer's Response  
19 to Applicant's First Set of Requests for Production of  
20 Documents and Things. I'll give you a minute to peruse  
21 this, and I'm going to ask you if you've seen this  
22 before?

23 A Okay.

24 Q Have you seen this document before?

25 A I don't believe so.

1 Q Did anyone ask you to look for documents in  
2 connection with this case?

3 A No.

4 MR. WILLIAMS: I'm going to mark the next  
5 exhibit.

6 (Deposition Exhibit 5 was marked for  
7 identification and was attached to the transcript.)

8 BY MR. WILLIAMS:

9 Q I've just marked as Exhibit 5 what was  
10 produced to us by Nextel's lawyers in response to our  
11 request for documents. Have you seen these papers  
12 before?

13 A No.

14 Q Are you aware of any other documents Nextel  
15 intends to produce in response to Motorola's request  
16 for documents?

17 A Not that I'm aware.

18 Q Are you aware of any other documents that  
19 Nextel intends to rely upon in these proceedings?

20 A Not that I'm aware.

21 MR. WILLIAMS: I'm going to mark another  
22 exhibit.

23 (Deposition Exhibit 6 was marked for  
24 identification and was attached to the transcript.)

25 BY MR. WILLIAMS:

1 Q I've just marked as Exhibit 6 Opposer's  
2 Response to Applicant's First Set of Interrogatories.  
3 Can you take a moment to review that please.

4 A Okay.

5 Q Have you seen that document before?

6 A I have seen it but not studied it.

7 Q When did you see that?

8 A When I met with counsel.

9 Q How long ago was that?

10 A April/May time frame.

11 Q April/May of 2005?

12 A Yes.

13 Q Did you assist in preparing Nextel's  
14 responses that are set forth in this document?

15 A No.

16 MR. WILLIAMS: Let's take a short break, and  
17 I think I can wrap this up fairly soon.

18 (Recess)

19 A Before we start, if I may, I think I may have  
20 misspoken on something, and I just wanted to clarify.

21 Q What would that be?

22 A Exhibit 4. You had asked me if I had been  
23 asked to look for any documents. I did, but nothing  
24 was found. So I just wanted to clarify that.

25 Q Exhibit 4 is Opposer's Response to

1 Applicant's First Set of Requests for Production of  
2 Documents and Things?

3 A Yes.

4 Q When were you asked?

5 A Most likely the first time we met which was  
6 March or April of 2005.

7 Q And you were asked by counsel?

8 A Yes, but I did not find any information.

9 Q Did you look for information?

10 A I did.

11 Q Where did you look?

12 A E-mails and just asking a few individuals,  
13 but nothing was found, and my conversations were very  
14 broad, nothing about what I was looking for other than  
15 just questions that were asked face-to-face with  
16 people.

17 Q Who were those people?

18 A Again, the trade show team, the competitive  
19 intelligence group. That was I believe it.

20 Q And you said you didn't locate any documents?

21 A Correct.

22 Q Did those people locate any documents, the  
23 trade show team or the competitive intelligence group?

24 A No. There were no documents found.

25 Q Did you do anything else?

1 A No.

2 Q Which e-mails did you review?

3 A E-mails?

4 Q I thought you said you looked through

5 e-mails.

6 A Oh, I just looked in my e-mail box, but I did

7 not have anything related to it because I wasn't aware

8 of this.

9 Q "This" being?

10 A The 911, until it was brought to our

11 attention.

12 Q Will you please look at Exhibit 6, paragraph

13 number 10.

14 A On page 6?

15 Q At the top of page 7 actually.

16 A Exhibit 6?

17 Q Yes.

18 A Right here? Okay.

19 Q Do you see where it says "opposer and

20 applicant are business partners"?

21 A Yes.

22 Q What's meant by that?

23 A We purchase our phones from Motorola.

24 Q Do you have any factual reason to believe

25 that Motorola would assert its trademark rights in the

1 911 tone against Nextel?

2 A Sorry. I need clarification.

3 Q Well, you stated that Nextel and Motorola are  
4 business partners. As business partners --

5 MR. JACOBS: The interrogatory response said  
6 that. She didn't state it.

7 BY MR. WILLIAMS:

8 Q As business partners do you have any factual  
9 reason to believe that Motorola would assert its 911  
10 tone against Nextel?

11 A I'm not involved. I really don't have an  
12 answer here.

13 Q But you're not aware of any reason?

14 A I'm sorry. One more time.

15 Q You're not aware of any reason why Motorola  
16 would assert its trademark rights against Nextel in  
17 connection with this 911 tone?

18 A I'm not aware.

19 MR. WILLIAMS: I'm going to mark another  
20 exhibit.

21 (Deposition Exhibit 7 was marked for  
22 identification and was attached to the transcript.)

23 BY MR. WILLIAMS:

24 Q I've just marked as Exhibit Number 7 a  
25 printout from the Patent and Trademark Office

1 electronic database covering the Nextel CHRRRP word  
2 mark. This is serial number 78/547,268. Were you  
3 aware that Nextel filed an application for this word  
4 mark?

5 A No, I was not.

6 MR. JACOBS: Just to make it clear, the mark  
7 that Mr. Williams or the document that Mr. Williams  
8 handed you, the mark is listed as CHRRRP.

9 A I'm not aware.

10 Q You're not aware of this application?

11 A No.

12 Q Do you know whether this mark CHRRRP has been  
13 used by Nextel?

14 A Not that I'm aware in advertising, no.

15 Q Are you aware of any plans to use that mark  
16 in advertising?

17 A I can't say for the future, but at this time  
18 I'm not aware.

19 MR. WILLIAMS: I have nothing further.

20 MR. JACOBS: Okay. Before we go off the  
21 record, I just want to confirm that this will be  
22 designated as Confidential - Attorneys' Eyes Only as  
23 stated in the protective order.

24 (Signature having not been waived, the deposition  
25 of Allison O'Reilly was concluded at 11:15 a.m.)

1 ACKNOWLEDGMENT OF DEPONENT

2 I, Allison O'Reilly, do hereby acknowledge  
3 that I have read and examined the foregoing testimony,  
4 and the same is a true, correct and complete  
5 transcription of the testimony given by me and any  
6 corrections appear on the attached Errata Sheet signed  
7 by me.

8

9

10

(DATE)

(SIGNATURE)

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1 CERTIFICATE OF SHORTHAND REPORTER - NOTARY PUBLIC

2

3 I, Nancy Bond Rowland, Registered

4 Professional Reporter, the officer before whom the  
5 foregoing proceedings were taken, do hereby certify  
6 that the foregoing transcript is a true and correct  
7 record of the proceedings; that said proceedings were  
8 taken by me stenographically and thereafter reduced to  
9 typewriting under my supervision; and that I am nether  
10 counsel for, related to, nor employed by any of the  
11 parties to this case and have no interest, financial or  
12 otherwise, in its outcome.

13 IN WITNESS WHEREOF, I have hereunto set my  
14 hand and affixed my notarial seal this 31st day of July  
15 2005.

16

17

18

19 My commission expires:

20 October 31, 2009

21

22 *Nancy Bond Rowland*

23

24 NOTARY PUBLIC IN AND FOR THE

25 DISTRICT OF COLUMBIA

1 E R R A T A S H E E T  
2 IN RE: Nextel v. Motorola  
3

4 RETURN BY: \_\_\_\_\_  
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25 (DATE)

(SIGNATURE)

1 E R R A T A S H E E T C O N T I N U E D

2 IN RE: Nextel v. Motorola

3

4 RETURN BY: \_\_\_\_\_

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6 PAGE LINE CORRECTION AND REASON

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25 (DATE)

(SIGNATURE)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

-----X

NEXTEL COMMUNICATIONS, INC., :

Opposer :

v. : App. No. 78/235,618

MOTOROLA, INC., :

Applicant :

-----X

I, Allison O'Reilly, being first duly sworn, on oath say that I am the deponent in the aforesaid deposition taken July 26, 2005, that I have read the foregoing transcript of the deposition, consisting of pages 1 to 65 inclusive, and affix my signature to same.

\_\_\_\_\_  
Allison O'Reilly

Subscribed and sworn to  
Before me this \_\_\_\_ day of  
\_\_\_\_\_, 2005

\_\_\_\_\_  
Notary Public

CASE: Nextel Communications, Inc. vs. Motorola, Inc.  
DEPONENT: Allison O'Reilly  
DATE TAKEN: July 26, 2005

PAGE	LINE	ERRATA SHEET
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[illegible]

(SIGNED) \_\_\_\_\_ DATE \_\_\_\_\_

REPORTER: Nancy Bond Rowland

LEGALINK – CHICAGO  
230 W. MONROE STREET – SUITE 1500  
CHICAGO, ILLINOIS 60606

August 9, 2005

Allison O'Reilly  
c/o Michael H. Jacobs, Esq.  
Crowell & Moring  
1001 Pennsylvania Ave. N.W.  
Washington, DC 20004

Case: Nextel Communications, Inc. vs. Motorola, Inc.  
Deponent: Allison O'Reilly  
Date Taken: July 26, 2005

Dear Allison O'Reilly:

Enclosed is your copy of the deposition transcript, along with the original signature page and errata sheet.

Pursuant to the court rules in this matter, the transcript is to be read and then signed under penalty of perjury.

If any corrections / changes are to be made, please TYPE or PRINT them on the attached errata sheet, giving the page and line number, desired correction / change, and reason.

Please arrange for accomplishment of same and transmittal of the original signature page and errata sheet back to our office within 30 days from the date of this letter.

Upon failure to comply within 30 days, we shall forward an appropriate affidavit of noncompliance to counsel without further notice.

Very truly yours,

LegaLink – Chicago

Cc: Thomas M. Williams, Esq. @ Brinks, Hofer, Gilson & Lione

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

-----X  
NEXTEL COMMUNICATIONS, INC., :  
Opposer :  
v. : App. No. 78/235,618  
MOTOROLA, INC., :  
Applicant :  
-----X

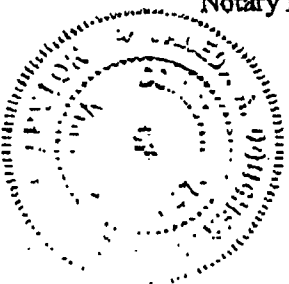
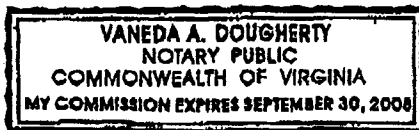
I, Allison O'Reilly, being first duly sworn, on oath say that I am the deponent in the  
aforesaid deposition taken July 26, 2005, that I have read the foregoing transcript of the  
deposition, consisting of pages 1 to 65 inclusive, and affix my signature to same.

Allison O'Reilly  
Allison O'Reilly

Subscribed and sworn to  
Before me this 9 day of

September, 2005

Vaneda A. Dougherty  
Notary Public



## ERRATA

Deposition of: Allison O'Reilly

I wish to make the following changes for the following reasons:

<u>Page</u>	<u>Line</u>	Change:	Reason:
✓✓ 11	2	eight - seven	Correction
✓✓ 11	18	Detwiler - Detweiler	Spelling Error
✓✓ 12	24	Detwiler - Detweiler	Spelling Error
✓✓ 19	20	Berkenstock - Birkenstock	Spelling Error
✓✓ 23	16	REM - RIM	Spelling Error
✓✓ 25	19	REM - RIM	Spelling Error
✓✓ 25	20	REM - RIM	Spelling Error
✓✓ 26	10	Delete "prior to me"	Clarification
✓✓ 29	14	Alert - Button	Clarification



Page

Line

✓ 30

16

Change: Blaire - Blair

Reason: Spelling Error

✓ 38

1

Change: REM - RIM

Reason: Spelling Error

✓ 38

5

Change: REM - RIM

Reason: Spelling Error

✓ 40

6

Change: REM - RIM

Reason: Spelling Error

this change  
is on line  
10 and  
line 6.

Signed: Alison O'Reilly

Dated: 9/4/05

A			
<p>able 39:6  about 8:25 13:11 16:4  18:21 20:23 21:12 41:4  44:21 45:21 51:9 52:2  58:14  <b>Absolutely</b> 6:3 9:15  15:19 29:24  <b>accepting</b> 9:12  <b>accurate</b> 6:2 30:24 53:8  53:13  <b>acknowledge</b> 62:2  <b>ACKNOWLEDGMENT</b>  62:1  <b>acquired</b> 35:17,19 36:3  36:11,12 43:17  <b>action</b> 8:2,24 9:2,8 31:11  31:14,15  <b>actually</b> 8:11 40:2 59:15  <b>address</b> 5:14,18 7:8 11:25  21:3 48:8,9  <b>ads</b> 47:17  <b>advertised</b> 53:24  <b>advertisements</b> 54:16  <b>advertising</b> 6:25 7:11  8:17,22,25 9:3,9,19,21  10:3,10,24 11:4 12:6,7  18:21 19:24 20:9 32:5  39:11 40:24 41:20  50:20 52:21 53:11,16  53:21 54:4 61:14,16  <b>affirmative</b> 42:5  <b>affixed</b> 63:14  <b>after</b> 10:21  <b>again</b> 8:6,24 9:19 18:2,5  18:14 20:7 23:21 25:14  26:11 30:11,12 32:4  35:23 38:6 39:10 41:3  42:20 43:5,21 44:8  47:16,17 49:25 50:10  53:8,13 55:12 58:18  <b>against</b> 60:1,10,16  <b>agencies</b> 20:10  <b>agency</b> 10:24 19:23,25  20:11,12,13  <b>ago</b> 57:9  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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

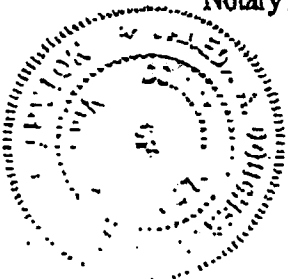
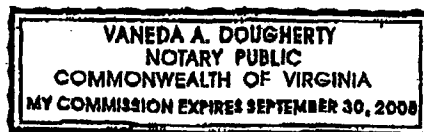
-----X  
NEXTEL COMMUNICATIONS, INC., :  
Opposer :  
v. : App. No. 78/235,618  
MOTOROLA, INC., :  
Applicant :  
-----X

I, Allison O'Reilly, being first duly sworn, on oath say that I am the deponent in the  
aforesaid deposition taken July 26, 2005, that I have read the foregoing transcript of the  
deposition, consisting of pages 1 to 65 inclusive, and affix my signature to same.

Allison O'Reilly  
Allison O'Reilly

Subscribed and sworn to  
Before me this 9 day of  
September, 2005

Vaneda A. Dougherty  
Notary Public



## ERRATA

Deposition of: Allison O'Reilly

I wish to make the following changes for the following reasons:

<u>Page</u>	<u>Line</u>	
✓✓ 11	2	Change: eight - seven Reason: Correction
✓✓ 11	18	Change: Detwiler - Detweiler Reason: Spelling Error
✓✓ 12	24	Change: Detwiler - Detweiler Reason: Spelling Error
✓✓ 19	20	Change: Berkenstock - Birkenstock Reason: Spelling Error
✓✓ 23	16	Change: REM - RIM Reason: Spelling Error
✓✓ 25	19	Change: REM - RIM Reason: Spelling Error
✓✓ 25	20	Change: REM - RIM Reason: Spelling Error
✓✓ 26	10	Change: Delete "prior to me" Reason: Clarification
✓✓ 29	14	Change: Alert - Button Reason: Clarification

Page

Line

✓ 30

16

Change: Blaire -- Blair

Reason: Spelling Error

✓ 38

1

Change: REM -- RIM

Reason: Spelling Error

✓ 38

5

Change: REM -- RIM

Reason: Spelling Error

✓ 40

6

Change: REM -- RIM

Reason: Spelling Error

Signed:

*this change  
is on line  
10 and  
line 6.*  
Alan O'Reilly

Dated:

9/9/05

# EXHIBIT 10

Nextel Communications, Inc., Opposer, v. Motorola, Inc., Applicant  
Opposition No.: 91/161,817  
Application No.: 78/235,618  
Mark: Sensory Mark (911 Hz Tone)

Exhibit 10 in Support of Applicant's Motion for Summary Judgment

**Thank you for your request. Here are the latest results from the TARR web server.**

**This page was generated by the TARR system on 2005-11-11 11:25:31 ET**

**Serial Number:** 78227515

**Registration Number:** 2827972

**Mark :** (SENSORY MARK ONLY)

**Standard Character claim:** No

**Current Status:** Registered.

**Date of Status:** 2004-03-30

**Filing Date:** 2003-03-19

**Transformed into a National Application:** No

**Registration Date:** 2004-03-30

**Register:** Principal

**Law Office Assigned:** LAW OFFICE 102

**If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov**

**Current Location:** 900 -File Repository (Franconia)

**Date In Location:** 2004-08-12

---

#### LAST APPLICANT(S)/OWNER(S) OF RECORD

---

1. AWS Convergence Technologies, Inc.

**Address:**

AWS Convergence Technologies, Inc.  
2-5 Metropolitan Court  
Gaithersburg, MD 20878  
United States

**Legal Entity Type:** Corporation

**State or Country of Incorporation:** Delaware

---

#### GOODS AND/OR SERVICES

---

**International Class:** 009

Software for notifying consumers of live weather conditions, weather forecasts, weather alerts, and other

weather related information by means of a global computer network

**First Use Date:** 2000-01-00

**First Use in Commerce Date:** 2000-04-00

**Basis:** 1(a)

---

### ADDITIONAL INFORMATION

---

**Description of Mark:** The mark consists of a series of five chirps similar to the chirping sound of a cricket.

---

### MADRID PROTOCOL INFORMATION

---

(NOT AVAILABLE)

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### PROSECUTION HISTORY

---

2004-03-30 - Registered - Principal Register

2004-01-06 - Published for opposition

2003-12-17 - Notice of publication

2003-11-24 - Approved for Pub - Principal Register (Initial exam)

2003-11-24 - EXAMINERS AMENDMENT E-MAILED

2003-11-24 - Previous allowance count withdrawn

2003-11-21 - Previous allowance count withdrawn

2003-10-16 - Approved for Pub - Principal Register (Initial exam)

2003-09-22 - Communication received from applicant

2003-09-22 - PAPER RECEIVED

2003-09-05 - Non-final action e-mailed

2003-08-22 - Case file assigned to examining attorney

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### CORRESPONDENCE INFORMATION

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